APPEAL NO. 022621
FILED NOVEMBER 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 18, 2002. The hearing officer determined the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease. The claimant appeals and the respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant attaches documents to her appeal that were not offered at the CCH. We will not generally consider evidence submitted and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The evidence the claimant attaches to her appeal could have been secured with due diligence prior to the CCH; consequently, we will not consider those documents for the first time on appeal.

The claimant testified that she worked for her employer for 24 years; that her duties included sitting at a computer terminal for extended hours answering the telephone; that during the last year that she worked, her headset was not functioning properly so she had to sit with her head tilted so that she could hear; that she had daily quotas to meet; that her station was ergonomically incorrect; and that having to sit in front of the computer monitor at her job caused her to suffer an occupational disease.

The claimant had the burden of proving a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she sustained the claimed injury was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93440, decided July 21, 1993 (Unpublished). An awkward sitting position, an uncomfortable chair, an ergonomically incorrect chair, or an inadequate office furniture configuration do not in themselves necessarily transform an ordinary disease of life into an occupational disease. *See* Texas Workers' Compensation Commission Appeal No. 931028, decided December 23, 1993; Texas Workers' Compensation Commission Appeal No. 950816, decided July 5, 1995; Texas Workers' Compensation Commission Appeal No. 960468, decided April 22, 1996; and Texas Workers' Compensation Commission Appeal No. 972136, decided December 4, 1997 (Unpublished). The

hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the decision of the hearing officer that the claimant did not sustain a compensable repetitive trauma strain injury to her low back.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HELMSMAN MANAGEMENT SERVICES** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Veronica Lopez
Appeals Judge

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Robert W. Potts
Appeals Judge